

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

KAWIKA TREVICE WORRELL
CAMILLE LIZETTE WORRELL,

Debtors.

CASE NO. 18-51776-PMB

CHAPTER: 13

JUDGE: HONORABLE PAUL BAISIER
CONTESTED MATTER

**DP ATLANTA’S RESPONSE IN OPPOSITION TO
MOTION TO RECONSIDER ORDER DISMISSING CASE**

COMES NOW Respondent, DP Atlanta (hereafter “DP”), and files its Response in Opposition to Motion to Reconsider Order Dismissing Case (“Response”).

I. STATEMENT OF FACTS

A. THE LOAN

1. On July 31, 2013, Kawika Worrell and Camille L. Worrell (“Debtors”) executed a note in the principal sum of \$82,500.00, payable to DP Atlanta. (the “Note”). The Note is secured by a Security Deed (the “Security Deed”) conveying title to the real property located at 2555 Flat Shoals Road, #3005, Atlanta, Georgia (the “Property”). The Security Deed was recorded on August 19, 2013, in Deed Book 53027, Page 684, Fulton County, Georgia Records. True and correct copies of the Note and Security Deed are attached hereto and made a part hereof as Exhibit A.

B. THE BANKRUPTCY

5. On February 2, 2018, Debtors filed a prior voluntary petition under Chapter 13 of the Bankruptcy Code, in the United States Bankruptcy Court, for the Northern District of

Georgia (Atlanta), and was assigned case No. 18-51776.

6. On the same day, Debtors filed a proposed Chapter 13 Plan. The Plan provided for a cure of an estimated arrearage owed to DP of \$4,860.00. The Plan also proposed that Debtors would maintain ongoing post-petition mortgage payments beginning with the first payment due after the order on relief under Chapter 13. *Docket Entry #2*.

7. On May 24, 2018, DP filed its Objection to Confirmation of Plan and Motion to Dismiss Case (“Objection and Motion to Dismiss”). The basis of the objection was that Debtors’ proposed Plan undertreated the arrearage owed of approximately \$12,661.82. The Objection and Motion to Dismiss reserved the right to raise failure of Debtors to have made post-petition mortgage payment. *Docket Entry #26*.

8. On August 30, 2018, Debtors filed an amended Plan resolving the undertreated arrearage owed to DP. *Docket Entry #39*.

9. On October 23, 2018, an Order was entered dismissing Debtors’ case for failure to provide proof of income and resolve Trustee’s objection regarding Debtors’ 2017 Tax Refund.

II. ARGUMENT

DEBTORS HAVE NOT MADE REGULAR, TIMELY POST-PETITION MORTGAGE PAYMENTS AS REQUIRED BY THE CHAPTER 13 PLAN

As previously indicated, Debtors were to maintain ongoing regular monthly mortgage payments beginning with the first payment due after the petition date. Per the terms of the Note, the payments are due at the end of the month. Accordingly, the first post-petition payment was due in February 2018. Payments are \$521.46 per month.

DP shows that, since this case was filed, Debtors have made payments in the amount of \$540.00/each on March 23, 2018, April 24, 2018, May 21, 2018, July 31, 2018, and September 20, 2018. This is a total of \$2,700.00. This would be enough to pay the February 2018 through June 2018 post-petition mortgage payments. Therefore, through December 2018 the loan would be due for the July 2018 through December 2018 payments for a total of \$3,036.06 including

unapplied funds of \$92.70. In addition, DP shows a total of \$182.49 in late charges.

Even if Debtors are able to resolve the grounds on which the case was dismissed, they would still be non-compliant with the proposed Chapter 13 Plan due to a failure to make regular, timely, post-petition mortgage payments as stated in their Chapter 13 Plan. This demonstrates that Debtors are unable to perform the requirements of a Chapter 13 Plan. Even if the dismissal order was vacated, the Debtors' Plan would remain non-compliant with 11 U.S.C. §1322(b)(5) and §1325(a)(3).

WHEREFORE, DP respectfully prays that the Court:

1. Enter an Order Denying Debtors' Motion to Reconsider Order Dismissing Case.
2. Award DP reasonable attorney fees and cost incurred in connection with this Motion; and
3. Any other relief that the Court deems just and proper.

/s/ Brian K. Jordan

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify under penalty of perjury that I am, and at all times hereinafter mentioned, was more than 18 years of age, and that on the December 5, 2018, I served a copy of **Response in Opposition to Motion to Reconsider Order Dismissing Case** which was filed in this bankruptcy matter on the December 5, 2018, in the manner indicated:

The following parties have been served via e-mail:

Howard P. Slomka
se@myatl.law.com

Melissa J. Davey
mail@13trusteeatlanta.com

Lureece D. Lewis
ll@atl.law

The following parties have been served via U.S. First Class Mail:

Camille Lizette Worrell
2555 Flat Shoals Rd
#3005
Atlanta, GA 30349

Kawika Trevice Worrell
2555 Flat Shoals Rd
#3005
Atlanta, GA 30349

**I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT.**

Dated: December 5, 2018

/s/Brian K. Jordan

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